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GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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**Testimony of  
WILLIAM J. AILA, Jr.  
Chairperson**

**Before the House Committee on  
OCEAN, MARINE RESOURCES, AND HAWAIIAN AFFAIRS**

**Friday, February 14, 2014  
10:00 AM  
State Capitol, Conference Room 325**

**In consideration of  
HOUSE BILL 2122, HOUSE DRAFT 1  
RELATING TO STATE HISTORIC PRESERVATION DIVISION**

House Bill 2122, House Draft 1 proposes to authorize the State Historic Preservation Division (Division) to set its fees administratively and exempts fee setting from Chapter 91, Hawaii Revised Statutes. **The Department of Land and Natural Resources (Department) strongly supports this measure.**

- The Division's current fee structure can be found at Chapter 13-275, Hawaii Administrative Rules. These were adopted in 2002 under the rulemaking process authorized in Chapter 91, Hawaii Revised Statutes (HRS).
- Due to the time and effort involved in meeting the requirements of Chapter 91, HRS, regular revisions of fees has been deemed impractical.
- Even if the Division determined to undertake revisions under Chapter 91, HRS. Fees subject to revision under Chapter 91, HRS, will always lag several years behind actual costs of doing business.
- Consequently, the Division's current fees, set through formal rulemaking, recover only a fraction of the actual administrative costs associated with the activity for which the fee is charged.
- In 2013, fees generated about \$45,000 for the Division's special revenue account.
- An updated fee structure will generate increased amount of revenue to help underwrite the Division's costs.

**WILLIAM J. AILA, JR.**  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

**ESTHER KIA'AINA**  
FIRST DEPUTY

**WILLIAM M. TAM**  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
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CONSERVATION AND COASTAL LANDS  
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ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

- Authorizing the Division to set fees administratively will allow the Division to adjust fees on a regular basis to reflect increases in the cost of doing business.

TO: Representative Faye P. Hanohano, Chair  
House Committee on Ocean, Marine Resources & Hawaiian Affairs

FROM: Sara L. Collins, Ph.D., Legislative Chair  
Society for Hawaiian Archaeology  
sara.l.collins.sha@gmail.com

HEARING: Friday, February 14, 2014 at 10:00 AM in Conference Room 325

SUBJECT: Testimony in OPPOSITION to HB 2122, HD 1, Relating to the Historic Preservation Division

I am Dr. Sara Collins, Chair of the Legislative Committee of the Society for Hawaiian Archaeology (SHA). We have over 150 members that include professional archaeologists and advocates of historic preservation in general. HB 2122, HD1 amends Chapter 6E-3(15), Hawaii Revised Statutes (HRS) to require the Department of Land and Natural Resources (DLNR) to establish a standardized fee schedule for the administration of its comprehensive historic preservation program. It also exempts the establishment of fees from the rulemaking process.

We believe that the State Historic Preservation Division (SHPD) should have the ability to raise its review fees, currently found in at Hawaii Administrative Rules (HAR) §§13-275-4 and 13-284-4, in order to provide partial support for its regulatory work and other mandated program elements. We do not, however, understand why this amendment is necessary and are concerned that it restricts public comment on any proposed fee change and the rationale used to formulate new fee schedules. Note that many of our members are responsible for the vast majority of fees currently paid. Our more detailed comments follow.

- The 2012 legislature passed Act 150 which authorized the Department (i.e., the Department of Land and Natural Resources – DLNR) to determine the fees charges by the State's comprehensive historic preservation program. Effectively, this meant that the already established fee schedule could be changed by the Board of Land and Natural Resources (BLNR), as they do for other fee schedules levied by divisions within the DLNR. Consideration and approval for any new fees would occur at one of the Board's regular public meetings, a venue which allows public testimony and comment. Despite being given this statutory authority in 2012, nearly two years later, SHPD still has not proposed any change in its fees. It would be a relatively simple matter to devise a new fee schedule, list it as an agenda item for a BLNR meeting, and notify those stakeholders most affected by the proposed change. We don't understand why SHPD has not done so or why this process now needs to be made even easier.
- This amendment explicitly removes the process for determining fees changes from the administrative rule making process outlined in Chapter 91, HRS. The language in HB 2122, HD1 saying that fees can be determined administratively implies that not even the BLNR needs to approve them. On the contrary, we think it is critical that determining fees be subject to some form of public vetting. The public, and many of our members in particular, need a chance to review and testify on any fee schedule and the justifications used by SHPD to determine an appropriate schedule. Our members are directly affected by these fees which, if raised, will also raise the cost of doing business.
- Our members are reluctant to support a mechanism making it easier for SHPD to raise fees unilaterally, without notice or consultation, when they do not believe SHPD is providing all of the routine services mandated by federal and state law. Although SHPD is making some gains in restoring these services, often due to the efforts of dedicated staff, our members have had to deal with issues such as the following for years now:

- Lack of a statewide historic site inventory that is up-to-date and readily accessible to the public, including archaeologists. This includes limited access to recently approved reports and plans. Both these documents and the inventory provide critical background information to determine which types of archaeological sites may be in a project area and to evaluate the significance and appropriate treatment of historic properties discovered.
  - Late reviews of archaeological reports and plans and the resulting delays in public and private sector projects.
  - Repeated cancellations of island burial council meetings and minutes that remain undone and unavailable for months, even years in some cases.
  - A marginally functional website which is difficult to navigate, lacks some legally required information, and is updated erratically.
- We are also concerned about the management of the funds SHPD has already received. For at least three years, SHPD has realized substantial sums (\$100,000 or more) due to not filling ongoing staff vacancies. We believe that SHPD should demonstrate that it can manage and appropriately spend the funds it already has before thinking of raising fees and doing so without public comment. Over the last several years, the Legislature has been generous in supporting SHPD with additional positions and funding. We continue to hope that this support will someday have the intended results.

Thank you for the opportunity to provide testimony in opposition to HB 2122, HD1. We respectfully ask that you hold this bill in committee and not pass it on further.

Should you have any questions, please feel free to contact me at the above email address.